

James R. Condo (#005867)  
Amanda Sheridan (#005867)  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2204  
Telephone: (602) 382-6000  
JCondo@swlaw.com  
ASheridan@swlaw.com

Richard B. North, Jr. (admitted *pro hac vice*)  
Georgia Bar No. 545599  
Matthew B. Lerner (admitted *pro hac vice*)  
Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW, Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
Richard.North@nelsonmullins.com  
Matthew.Lerner@nelsonmullins.com

*Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability    MDL NO. 15-02641-PHX-DGC  
Litigation

This Document Relates to:

JOHNISHA WRIGHT,

Plaintiff,

Case No. CV-15-03466-PHX-DGC

v.

C. R. BARD, INC., a New Jersey  
Corporation; AND BARD PERIPHERAL  
VASCULAR INC., an Arizona  
Corporation,

Defendants.

**DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT FOR  
FAILURE TO COMPLY WITH  
AMENDED CASE MANAGEMENT  
ORDER NO. 5**

Pursuant to Fed. R. Civ. P. 12(b) Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. ("Bard") respectfully move this Court to dismiss Plaintiff's Complaint for failure to comply with the terms of Amended Case Management Order No. 5 pertaining to timely service of Plaintiff Profile Forms ("PPF").

### I. PROCEDURAL HISTORY

On October 12, 2016, Plaintiff filed a Second Amended Short Form Complaint in MDL 2641, *In Re: Bard IVC Filters Products Liability Litigation*, and subsequently, served Bard with a copy of the Summons and Complaint the same day. *See* Waiver Transmittal Email from Plaintiff's counsel attached hereto as Exhibit A. On March 3, 2016, this Court entered Case Management Order No. 5 [Doc. 927] (the "Order") which ordered, in part:

In cases that have been filed in, removed to or transferred to this MDL on or after the date of this Order, each plaintiff shall submit a completed PPF to defendants within 60 days of filing the complaint

*Id.* at 1:18-19. The Order further made clear that:

If a plaintiff does not submit a PPF within the time specified in this Order, defendants shall mail an overdue letter by e-mail and U.S. mail to Plaintiffs' Co-Lead Counsel and the plaintiffs' individual representative counsel, stating that defendants may move to dismiss that plaintiff's case within 20 days of receipt of the letter. If no PPF is received within those 20 additional days, defendants may move immediately to dismiss that plaintiff's case.

*Id.* at 2:17-22.

Plaintiff's PPF was due to be served within 60 days of filing the complaint, to wit: December 11, 2016, but Bard was not served with Plaintiff's PPF by that date. Subsequently, on December 21, 2016, February 3, 2017, May 23, 2017, and September 18, 2017, counsel for Bard sent Plaintiff's Co-Lead Counsel and individual representative counsel an overdue letter via email and U.S. Mail notifying Plaintiff's counsel of the overdue PPF, and Bard's right under the Order to move to dismiss the Complaint for failure to comply with the protocol set forth by the Order. *See* emails and letters from Bard's counsel, attached as

1 Exhibit B. To date, Bard still has not received a PPF from the plaintiff in response to its  
2 overdue letter.

## 3 **II. ARGUMENT AND CITATION TO AUTHORITY**

4 The Ninth Circuit has ruled that at least one federal district court sitting over an MDL  
5 action did not abuse its discretion in dismissing certain plaintiff's complaints for failure to  
6 comply with case management orders related to service of plaintiff fact sheets. *In re:*  
7 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1232-34 (9th Cir.  
8 2006).

9 Here, the Court entered an Order governing the timely service of PPFs, and providing  
10 a clear protocol for sending and responding to PPF overdue (and deficiency) letters. Plaintiff  
11 failed to serve a PPF within 60 days of the filing of the complaint, failed to serve a PPF  
12 within 20 days of receiving the first overdue letter, and has subsequently ignored three (3)  
13 additional requests to serve a PPF upon Bard; thereby, delaying the discovery process and  
14 forcing Bard to incur the cost of filing this Motion. Accordingly, Plaintiff's Complaint may  
15 be dismissed by the Court pursuant to the terms of Case Management Order No. 5 [Doc.  
16 927].

17 WHEREFORE, Bard respectfully requests that this Court enter an Order dismissing  
18 Plaintiff's Complaint for the foregoing reasons. For the Court's convenience, a proposed  
19 order is attached as Exhibit C.

20 This 26<sup>th</sup> day of September, 2017.

21 s/Richard B. North, Jr.  
22 Richard B. North, Jr.  
23 Georgia Bar No. 545599  
24 Matthew B. Lerner  
25 Georgia Bar No. 446986  
26 NELSON MULLINS RILEY & SCARBOROUGH, LLP  
27 Atlantic Station  
28 201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
PH: (404) 322-6000  
FX: (404) 322-6050  
Richard.North@nelsonmullins.com

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Phoenix, AZ 85004-2204  
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ASheridan@swlaw.com

**Attorney for Defendants C. R. Bard, Inc. and  
Bard Peripheral Vascular, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 26, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

s/Richard B. North, Jr.  
Richard B. North, Jr.  
Georgia Bar No. 545599  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
PH: (404) 322-6000  
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